

REMARKS

In the Office Action dated May 18, 2005, claims 1-31 were presented for examination. Claims 1-31 were rejected under nonstatutory double patenting. Claims 1, 4, 6-7, 15-17, 24-25, and 31 were rejected under 35 U.S.C. §102(b) as being anticipated by *Ho*, U.S. Patent No. 5,615,373.

Applicant wishes to thank the Examiner for the careful and thorough review and action on the merits in this application.

I. Nonstatutory Double Patenting

Claims 1-31 were rejected under non-statutory double patenting over *McKenney*, U.S. Patent No. 6,678,772. Applicant has attached a terminal disclaimer to overcome this rejection. Accordingly, Applicant believes that claims 1-31 are now in condition for allowance.

II. 35 U.S.C. §102(b) - Anticipation by *Ho*

Claims 1, 4, 6-7, 15-17, 24-25, and 31 were rejected under 35 U.S.C. §102(b) as being unpatentable over *Ho*, U.S. Patent No. 5,615,373.

The *Ho* patent teaches a data lock management system in a distributed file system. The locks granted in the *Ho* system are variable lifetime locks. "[T]he lifetime of a data lock is determined at the time the lock is granted. In accordance with the invention, the lock lifetime is determined in either a static scheme or a dynamic scheme based on system operating statistics and other parameters." Col. 4, lines 37-41. The lock being acquired in *Ho* is already operating in a mode. Accordingly, it is the lifetime of the lock that is determined in response to system parameters not the form of the lock utilized.

Applicant's invention differs from the patent to *Ho*. Like *Ho*, Applicant maintains system-wide measures of read and write acquisitions. However, it is the method in which the

measures are used in the inventions of Applicant and *Ho* that differ. Applicant's invention pertains to a reader-writer lock having already been granted. The mode of Applicant is the formative of the lock, not the lifetime of the lock. In *Ho*, the formative of the lock has been selected, and the mode is the lifetime of the lock. *Ho* does not determine the type of lock that may be appropriate based upon system measures. Rather, the mode of *Ho* pertains to the lifetime, *i.e.* duration, of the lock. Applicant's claimed invention provides that a lock mode, *i.e.* formative of the lock, is determined in response to the system measure without concern for lock lifetime. Accordingly, *Ho* neither teaches or implies Applicant's limitations of determining a lock mode, wherein the mode pertains to the form of reader-writer lock, as opposed to *Ho* which determines a lock mode, wherein the lock mode is the finite lifetime of the lock being granted.

In order for the claimed invention to be anticipated under 35 U.S.C. §102(b), the prior art must teach all claimed limitations presented by the claimed invention. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." MPEP §2131 (citing *Verdegaal Bros. v. Union Oil Co. of California*, 814 F. 2d 628, 631, 2 U.S.P.Q. 2d 1051, 1053 (Fed. Cir. 1987)). As mentioned above, *Ho* does not show all of the elements as claimed by Applicant in pending claims 1, 4, 6-7, 15-17, 24-25, and 31. Specifically, *Ho* does not show a method of system for selecting a lock mode, *i.e.* lock formative, in response to system measures, rather *Ho* shows a grouping of processors and a method for calculating a lock lifetime in response to system measures. Accordingly, *Ho* clearly fails to teach the limitations pertaining to the selection of a lock mode, as defined by Applicant as presented in Applicant's pending claims 1, 4, 6-7, 15-17, 24-25, and 31.

"[A] previous patent anticipates a purported invention only where, except for insubstantial differences, it contains *all* of the same elements operating in the same fashion to perform an identical function." *Saunders v. Air-Flo Co.*, 646 F.2d 1201, 1203 (7th Cir. 1981) citing *Popeil Brothers, Inc. v. Schick Electric, Inc.*, 494 F. 2d 162, 164 (7th Cir. 1974) (holding patents were not invalid as being anticipated by or obvious in light of prior art) (*emphasis added*). *Ho* does not anticipate the invention of Applicant based upon the legal definition of

anticipation. Although the prior art cited by the Examiner relates to processors and locks associated therewith, *Ho* fails to show each and every element as presented in Applicant's claimed invention. In fact, *Ho* does not show determining a lock mode responsive to system measures. Rather, *Ho* shows determining a lock lifetime in response to system measure. A lock mode as defined by Applicant pertains to the implementation of the lock, *i.e.* "primitives that provide efficient modes of operation for differing levels of contention", see page 7, lines 16-17, whereas a lock lifetime pertains to the term in which the granted lock will be active. The lock mode of Applicant is not an equivalent element to the lock lifetime of *Ho*. Accordingly, Applicant respectfully requests the Examiner to remove the rejection of claims 1, 4, 6-7, 15-17, 24-25, and 31, and to provide allowance of this application.

For the reasons outlined above, withdrawal of the rejection of record and an allowance of this application are respectfully requested.

Respectfully submitted,

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